

Message Text

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TAGS: CPRS, PFOR, FR

SUBJECT: EXTRADITION - HOLDER/KERKOW

REF: PARIS 9419

MONTREAL FOR USREP ICAO

1. SUMMARY. REFTEL REPORTS DECISION OF FRENCH COURT THAT
1972 HIJACKING WAS POLITICALLY MOTIVATED AND FALLS WITHIN
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POLITICAL OFFENSE EXEMPTION FROM EXTRADITION UNDER US-FRENCH
BILATERAL EXTRADITION TREATY. USG REGARDS THIS DECISION AS
MISAPPLICATION OF CRITERIA FOR POLITICAL OFFENSE UNDER
INTERNATIONAL EXTRADITION PRACTICE AND IS BASED, SO FAR AS

WE ARE AWARE, ON UNSUPPORTED ALLEGATIONS OF FUGITIVES THEMSELVES AS TO WHAT THEIR MOTIVES WERE.

2. DEPARTMENT PREPARING PROTEST NOTE WHICH WILL STRESS ERROR OF COURT UNDER INTERNATIONAL PRACTICE IN FINDING POLITICAL OFFENSE SOLELY ON BASIS ALLEGED MOTIVATION FOR

CLEARLY CRIMINAL ACTS OF HIJACKING, KIDNAPPING AND EXTORTION DANGER TO INTERNATIONAL CIVIL AVIATION THIS PRESENTS AS PRECEDENT; AND CLEAR OBLIGATION GOF HAS NOW UNDER HAGUE CONVENTION TO INITIATE PROSECUTION OF HOLDER AND KERKOW FOR HIJACKING. IF WE CAN CONFIRM, WHAT WE BELIEVE TO BE FACT, THAT ONLY "EVIDENCE" BEFORE COURT OF POLITICAL MOTIVATION WERE UNSUPPORTED ALLEGATIONS OF THE ACCUSED, WE WILL ADD THAT AS A BASIS FOR PROTEST.

3. WITH REGARD TO CASE FOR POLITICAL OFFENSE, APPARENTLY ACCEPTED BY COURT, WE NEED CLARIFICATION OF SEVERAL POINTS IN DECISION REPORTED REFTEL. PRESIDENT OF COURT NOTED THAT NO ONE WAS DISPUTING FACTS OF CASE BUT DECIDED THAT CRIME WAS A POLITICAL OFFENSE BECAUSE OF SUBJECTS' "POLITICAL MOTIVATION." DEPARTMENT NEEDS TO KNOW, ASAP, WHAT EVIDENCE REPEAT, EVIDENCE IN THE RECORD INDICATES SAID POLITICAL MOTIVATION. WAS THERE ANY EVIDENCE PRESENTED TO COURT, OTHER THAN SUBJECTS' OWN STATEMENTS, WHICH COURT USED TO BASE ITS DECISION ON POLITICAL OFFENSE? EVERY POINT REPORTED REFTEL WAS REBUTTED BY EVIDENCE WE PRESENTED:

(1) HOLDER'S MILITARY RECORDS (CARRIED TO EMBASSY UNDER COVER OF AFFIDAVIT AS REPORTED STATE 5143) SHOW THAT HOLDER DID NOT DESERT AND WAS NOT DISHONORABLY DISCHARGED. DID COURT MERELY ACCEPT HOLDER'S CLAIMS AS TRUTH IN FACE OF CONTRADICTORY EVIDENCE, OR DID HOLDER PRESENT EVIDENCE?

(2) WHAT EVIDENCE DID SUBJECTS GIVE TO COURT TO PROVE MILITANCY IN ANTI-WAR MOVEMENTS?

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(3) OTHER THAN MERE STATEMENT IN PLANE THAT THEY MIGHT GO TO HANOI (WITH NO FOLLOW-UP) WHAT EVIDENCE DID SUBJECTS PRESENT TO SHOW HIJACKING WAS MEANS TO PROTEST WAR? EVIDENCE FROM PILOTS SHOWS PLANE COULD HAVE GONE TO HANOI, BUT SUBJECTS CHOSE TO GO TO ALGIERS INSTEAD. WHAT EVIDENCE SHOWS THAT THEY HIJACKED PLANE AS PROTEST?

(4) THE EVIDENCE FROM PILOTS SHOWS THAT SUBJECTS NEVER STATED THAT RANSOM WAS TO GO TO VIET-CONG. WHAT EVIDENCE DID SUBJECTS PROVIDE TO INDICATE RANSOM WAS TO GO TO VIET-CONG?

4. COURT'S POINT REGARDING FACT THAT NO ONE WAS HURT IS PERTINENT, AS THE REASON NO ONE WAS HURT WAS THAT EVERYONE COOPERATED IN FACE OF THREATS TO KILL EVERYONE ON BOARD.

THE FACT THAT SUBJECTS REAPED NO FINANCIAL GAIN WAS SIMPLY BECAUSE GOVERNMENT OF ALGERIA SEIZED THE RANSOM AND RETURNED IT TO U.S. FACT STILL REMAINS THAT INDIVIDUALS LIVES WERE HELD AT BAY FOR RANSOM.

5. IT APPEARS THAT THE COURT MADE DECISION ON MERE ALLEGATIONS OF POLITICAL MOTIVES IN THE FACE OF REBUTTING EVIDENCE PRESENTED BY USG. DEPARTMENT NEEDS TO KNOW IF THIS IS TRUE OR IF EVIDENCE WE DO NOT KNOW ABOUT WAS PRESENTED. DEPARTMENT WOULD ALSO LIKE TO KNOW IF GOF TOOK A POSITION BEFORE COURT. KISSINGER

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